

applications, WO 93/12892, WO 93/13393, and WO 93/12934 were published on July 8, 1993. Accordingly, applicants attorneys no longer rely on 37 C.F.R. § 1.14 as a reason for not responding to the Examiner's citation of the non-priority PCT applications.

Applicants, however, disagree with the Examiner that the Response filed on May 9, 2001 did not fully address the issues raised at the oral interview concerning these non-priority PCT applications. These non-priority PCT applications based on WO 93/12892, WO 93/13393 and WO 93/12934 all contain the same written description as the PCT priority parent application in the present case. Stated otherwise, the written description of each of these non-priority PCT applications amount to a word-for-word copy of the parent application in this case. As to each, i.e., the non-priority PCT applications based on WO 93/12892, WO 93/13393 and WO 93/12934 do not contain anything in the prosecution that applicants gave up in those non-priority PCT applications to obtain allowance of the claims in Russo et al., United States Patent No. 5,401,305 that forms the basis for the present reissue application. As applicants stated in their May 9, 2001 Reply in the present application:

Applicants have not incorporated the non-priority PCT applications in the chain that makes up the priority applications of the present case. Members of the public and especially competitors of the applicants could not look to the non-priority PCT applications as bearing on the prosecution of the present reissue application, and therefore could not rely on any statements made by the applicants in those applications to determine the scope of protection applicants sought in the [Russo et al.] . . . application. Applicants did not give up any subject matter of any of the non-priority PCT applications in order to obtain allowance of the claims in the [Russo et al.] . . . application.

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT,
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, DC 20005
202-406-4000

(May 9, 2001 Amendment penultimate sentence and paragraph bridging pages 4 and 5.)

Applicants again emphasize that the foregoing statement applies to each of the non-priority PCT applications.

With each of the non-priority PCT applications having the same written description as the priority application for the present case, they cannot amount to prior art against the present application.

Conclusions


The non-priority PCT applications do not bear on the prosecution of the present application since applicants have not identified them for priority purposes, and have not given up subject matter in those applications that led to the allowance of the parent application.

Applicants again respectfully request the Examiner to withdraw the rejection and allow all of the reissue claims and declare an interference with at least Athey et al., United States Patent No. 5,536,718 and/or other related patents.

If filing this response requires an extension of time pursuant to 37 C.F.R. § 1.136 and payment of an extension fee or other fee which this response fails to account for, applicants' attorneys request such an extension and payment of any fees due from their Deposit Account Number 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: 
Robert J. Eichelburg
Reg. No. 23,057

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT,
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, DC 20005
202-408-4000